

MINUTES
RANDOLPH COUNTY ZONING BOARD OF ADJUSTMENT

February 3, 2004

The Randolph County Zoning Board of Adjustment met at 6:30 p.m., on Tuesday, February 3, 2004, in the Commissioners' Meeting Room, Randolph County Office Building, 725 McDowell Road, Asheboro, North Carolina.

1. **Chairman Maxton McDowell** called to order the Randolph County Zoning Board of Adjustment meeting at 6:30 p.m.
2. **Hal Johnson**, Planning Director, called roll of the Members: Maxton McDowell, Chairman, present; Bill Dorsett, Vice Chairman, present; Lynden Craven, present; Phil Ridge, present; Larry Brown, present; and Chris McLeod, present.
3. **REQUEST FOR A VARIANCE:**

Swearing in of the Witness - *"Do you swear or affirm that the information you are about to give is the truth, the whole truth, and nothing but the truth, so help you God."*

Jon Megerian took this oath.

- A. **CLIFF LOFLIN**, Denton, North Carolina, is appealing the County Planning Director's determination that his property located at 7431 Gravel Hill Road, 7.41 acres, New Hope Township, Zoning District RA, Parcel ID# 6686592538. is currently in violation of Randolph County Zoning Regulations. The specific violated regulation noted is Article XIII, Administrative and Legal Provisions; Section 2, (A & B), for failure to obtain the appropriate zoning permit prior to construction of a 70' x 100' building. The Planning Director further determined that the building constructed without permits is not being used as part of an exempt agricultural operation.

Johnson gave a review of the Appeal, and the issues he considered in making a determination that the building construction without permits did not qualify as an "agriculturally exempt" farm building under County zoning regulations. Johnson submitted a copy of the letter notifying Mr. Loflin of his violation and dated December 1, 2003, as part of the record. Johnson said the letter outlines in detail the extensive contact Mr. Loflin had with County Code Enforcement Officers concerning the construction of the building without permits, and also extensive contact with Code Enforcement Officers concerning factors that would not make the building exempt from zoning permits and related building permits. Johnson submitted as part of the record pictures taken by Code Enforcement Officers on various dates. The pictures indicated that the building was being used for storage of equipment parts associated with Mr. Loflin's legally zoned and operating Bobcat business located a few feet from the location of the building in question. Pictures taken after the date of Mr. Loflin's letter of violation dated December 1, 2003, reflect that the building was still being used to store equipment parts but now also included bundles of hay. Johnson said that the 7.41-acre tract upon which Mr. Loflin had constructed the building was not being used for any farming or agricultural purposes that could be determined upon visual inspection of the property. Johnson submitted a map prepared by the County GIS Computer System that indicated all the properties owned by Mr. Loflin. The locations of these properties were from 1.5 miles to 13 miles from the location of the building constructed without permits. Johnson said he had seen no

evidence that Mr. Loflin derived income from farming or agricultural use of the 7.41-acre tract upon which Mr. Loflin had constructed the building without permits. Johnson said that Mr. Loflin did not want to obtain the proper zoning and building permits because it would be difficult for the existing building to meet the state building codes. The only way for Mr. Loflin to avoid the requirement that the new construction meet the N.C. Building Code was to have the building considered as an agriculturally exempt structure. Johnson said the Planning Department was notified of Mr. Loflin's construction without permits by the County Building Inspections Department after a citizen had contacted the N.C. Department of Insurance to complain about Mr. Loflin's construction of buildings without required permits.

Jon Megerian, Attorney, representing Cliff Loflin, addressed the Board and said that he did not have a real argument that the applicant had been using the building for commercial purposes. Megerian said that he was concerned that the applicant could not apply for a commercial building and zoning permit in a Residential Agricultural Zoning District. This would prohibit his client from complying with the request of the Planning Director as outlined in the Director's letter of December 1. Megerian said that his client had two options, and he chose the option of not using his existing building for commercial purposes and use the building for agricultural purposes that would exempt it from the requirement of obtaining a zoning and building permit. Megerian said that he did not feel that the County Planning Director could order the applicant to rezone his property. Megerian said that his client had the option to use his building for commercial purposes, which would require him to rezone his property and obtain all the appropriate permits, including meeting the N.C. Building Codes. Megerian said that his client wanted to use the building only for agricultural purposes and would not use it for commercial purposes. **Brown** asked Johnson if the building would meet codes and **Johnson** answered no. **Megerian** said that Mr. Loflin had put up a barn but had been using it for commercial purposes. Megerian said if the commercial activity was removed from the building, and it was only used for agricultural purposes, the building would be in compliance with zoning and building codes. **Johnson** said that the issue before the Board of Adjustment was whether such a building located on the 7.41-acre tract could be considered as "agriculturally exempt." **Dorsett** asked Megerian if his client had ever made any attempt to remove the commercial storage after being notified by the County of his violation. **Megerian** said he thought Mr. Loflin had removed some of the commercial storage. **Dorsett** said he felt the pictures indicated that Mr. Loflin had not made any real effort to discontinue the commercial use. **McDowell** asked if there had been any attempt by Mr. Loflin to obtain the appropriate permits to locate this building on his property. **Megerian** said that Mr. Loflin had not asked for permits. **Brown** said that he did not feel that Mr. Loflin was unaware of the need to obtain proper zoning and building permits because Mr. Loflin had come before the Board on previous occasions to obtain rezoning for other properties. **McDowell** asked Johnson if Mr. Loflin removed the commercial storage and used the building for hay storage could the building be considered farm exempt. **Johnson** said it was his opinion as Planning Director that for the building to be considered "farm exempt" there should be some type of farming activity being conducted on the 7.41-acre tract. **McLeod** asked Johnson if the building had to be located on farm-deferred property as recognized by the County Tax Department, to be considered as a "farm exempt" building for zoning purposes. **Johnson** said no; however, there needed to be some type of farming operation located on the land upon which the building was located. **Megerian** said that his client felt that the building could be exempt if it were only used for farming and agricultural purposes.

BEING NO FURTHER EVIDENCE OR TESTIMONY PRESENTED, THE BOARD ADJOURNED THE PUBLIC HEARING TO RENDER A DECISION:

Dorsett said that he felt Mr. Loflin built a building without obtaining the proper permits and had not taken adequate action to meet County and State regulations after being notified by the County. Dorsett said the pictures presented clearly showed that Mr. Loflin was using the building for commercial purposes and that he felt that Mr. Loflin was now trying to shift the blame for his failure to obtain permits on the Planning Director.

Craven said that he realized that sometimes people push the limits with farm exemptions, but the law was established to protect real working farmers and provide them an economic advantage that is necessary in such a risky business. Craven said Mr. Loflin had presented no evidence that any income from farming was obtained from the property upon which the building was constructed.

ORDER OF THE BOARD OF ADJUSTMENT

Dorsett made the motion, seconded by **Craven**, to affirm the decision of the County Planning Director that the building under question was constructed without proper permits and that the building would not be exempted from permit requirements under County and State Agricultural exemption zoning and building codes.

THIS MOTION PASSED UNANIMOUSLY.

Johnson advised Megerian that the formal Order of the Board would be reviewed and approved by the Board at their next regular meeting held March 2, 2004. At this time the Order would be entered into the Minutes of the Board and forwarded to Mr. Megerian and his client Mr. Loflin.

4. The meeting adjourned. There was one citizen present for this hearing.